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individual records ~~that were not subject to an exception review finding~~ in accordance with rule 5101:3-3-40 of the Administrative Code; however, the exception review determination for any resident case mix score during or at the conclusion of the exception review will take precedence over the corrections submitted by the NF for purposes of determining the facility average case mix score.

- (P) The NF may seek reconsideration in accordance with paragraph (B) of rule 5101:3-3-24 of the Administrative Code for direct care rates recalculated as a result of an exception review conducted before the effective date of the rate and may submit any additional information for specific individual record(s).
- (Q) The findings of an exception review conducted after the effective date of the rate may be appealed under provisions of the Administrative Procedure Act, Chapter 119 of the Revised Code. ~~ODHSODJFS~~ shall not withhold from the facility's current payments any amounts ~~ODHSODJFS~~ claims to be due from the facility as a result of the exception review ~~finding~~ findings while the NF is pursuing administrative or judicial remedies in good faith.

Effective: 7/1/2002

R.C. 119.032 review dates: 4/11/2002 and 07/01/2007

#### CERTIFIED ELECTRONICALLY

Certification

06/20/2002 11:26 AM

Date

Promulgated Under: 119.03  
Statutory Authority: 5111.02, 5111.27, 5111.29  
Rule Amplifies: 5111.01, 5111.02, 5111.27,  
5111.28, 5111.29  
Prior Effective Dates: 10/1/94, 7/1/98

TN #02-020 APPROVAL DATE NOV 22 2002  
SUPERSEDES  
TN #98-10 EFFECTIVE DATE 7/1/02

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AMENDED

Appendix A  
Exception Review Resident Initial Sample Selection

| Resident Census on<br>Reporting Period End Date | Minimum Initial Sample Size<br>Required |
|---|---|
| 1-4   | All                                     |
| 5-10  | 5                                       |
| 11-20   | 8                                       |
| 21-40   | 10                                      |
| 41-44   | 11                                      |
| 45-48   | 12                                      |
| 49-52   | 13                                      |
| 53-56   | 14                                      |
| 57-75   | 15                                      |
| 76-80   | 16                                      |
| 81-85   | 17                                      |
| 86-90   | 18                                      |
| 91-95   | 19                                      |
| 96-100  | 20                                      |
| 101-105   | 21                                      |
| 106-110   | 22                                      |
| 111-115   | 23                                      |
| 116-160   | 24                                      |
| 161-166   | 25                                      |

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### Continued: Appendix A

### Exception Review Resident Initial Sample Selection

| Resident Census on<br>Reporting Period End Date | Minimum Initial Sample Size<br>Required |
|---|---|
| 167-173   | 26                                      |
| 174-180   | 27                                      |
| 181-186   | 28                                      |
| 187-193   | 29                                      |
| 194-300   | 30                                      |
| 301-310   | 31                                      |
| 311-320   | 32                                      |
| 321-330   | 33                                      |
| 331-340   | 34                                      |
| 341-350   | 35                                      |
| 351-360   | 36                                      |
| 361-370   | 37                                      |
| 371-380   | 38                                      |
| 381-400   | 39                                      |
| 401-410   | 40                                      |
| 411-420   | 41                                      |
| 421-430   | 42                                      |
| 431-440   | 43                                      |
| 441-450   | 44                                      |
| 451-460   | 45                                      |

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Exception Review Resident Initial Sample Selection

| Resident Census on<br>Reporting Period End Date | Minimum Initial Sample Size<br>Required |
|---|---|
| 451-460   | 46                                      |
| 461-470   | 47                                      |
| 471-480   | 48                                      |
| 481-490   | 49                                      |
| 491 or greater                                  | 50                                      |

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ENACTED

### Appendix B

#### Exception Review Resident Expanded Sample Selection

| Resident Census on Reporting<br>Period End Date | Minimum Expanded Sample Size<br>Required (includes initial sample) |
|---|--|
| 1   | 1  |
| 2   | 2  |
| 3   | 3  |
| 4   | 4  |
| 5   | 5  |
| 6   | 6  |
| 7   | 7  |
| 8   | 8  |
| 9   | 9  |
| 10-11   | 10   |
| 12  | 11   |
| 13  | 12   |
| 14-15   | 13   |
| 16  | 14   |
| 17  | 15   |
| 18-19   | 16   |
| 20  | 17   |
| 21-22   | 18   |
| 23  | 19   |
| 24-25   | 20   |

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Exception Review Resident Expanded Sample Selection

| Resident Census on Reporting<br>Period End Date | Minimum Expanded Sample Size<br>Required (includes initial sample) |
|---|--|
| 26  | 21   |
| 27-28   | 22   |
| 29-30   | 23   |
| 31  | 24   |
| 32-33   | 25   |
| 34-35   | 26   |
| 36-37   | 27   |
| 38-39   | 28   |
| 40-41   | 29   |
| 42-43   | 30   |
| 44-45   | 31   |
| 46-47   | 32   |
| 48-50   | 33   |
| 51-52   | 34   |
| 53-55   | 35   |
| 56-57   | 36   |
| 58-60   | 37   |
| 61-62   | 38   |
| 63-65   | 39   |
| 66-68   | 40   |
| 69-71   | 41   |

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### Continued: Appendix B Exception Review Resident Expanded Sample Selection

| Resident Census on Reporting<br>Period End Date | Minimum Expanded Sample Size<br>Required (includes initial sample) |
|---|--|
| 72-74   | 42   |
| 75-77   | 43   |
| 78-81   | 44   |
| 82-84   | 45   |
| 85-88   | 46   |
| 89-92   | 47   |
| 93-95   | 48   |
| 96-100  | 49   |
| 101-104   | 50   |
| 105-108   | 51   |
| 109-113   | 52   |
| 114-118   | 53   |
| 119-123   | 54   |
| 124-128   | 55   |
| 129-134   | 56   |
| 135-140   | 57   |
| 141-146   | 58   |
| 147-152   | 59   |
| 153-159   | 60   |
| 160-167   | 61   |

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### Continued: Appendix B Exception Review Resident Expanded Sample Selection

| Resident Census on<br>Reporting Period End Date | Minimum Expanded Sample Size<br>Required (includes initial sample) |
|---|--|
| 168-174   | 62   |
| 175-183   | 63   |
| 184-191   | 64   |
| 192-201   | 65   |
| 202-211   | 66   |
| 212-221   | 67   |
| 222-232   | 68   |
| 233-245   | 69   |
| 246-258   | 70   |
| 259-272   | 71   |
| 273-287   | 72   |
| 288-304   | 73   |
| 305-322   | 74   |
| 323-342   | 75   |
| 343-364   | 76   |
| 365 or greater                                  | 77   |

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**INFORMATION ONLY****LEGAL NOTICE****STATE OF OHIO  
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
COLUMBUS, OHIO**

PURSUANT TO SECTION 5111.02 AND CHAPTER 119. OF THE REVISED CODE, AND SECTION 1902 (a)(13)(A) OF THE SOCIAL SECURITY ACT, THE DIRECTOR OF THE DEPARTMENT OF JOB AND FAMILY SERVICES GIVES NOTICE OF THE DEPARTMENT'S FINAL AMENDMENT OF RULE 5101:3-3-52.1 OF THE ADMINISTRATIVE CODE ON A PERMANENT BASIS.

5101:3-3-52.1 entitled "Exception review process for nursing facilities (NFs)" sets forth changes to the exception review process for nursing facilities (NFs). The Medicaid long term care payment system provides for the Ohio Department of Job and Family Services (ODJFS) to perform clinical audits, known as exception reviews, of the Minimum Data Set version 2.0 (MDS 2.0) assessment data provided by NFs. This rule is being reviewed pursuant to Section 119.032 of the Ohio Revised Code (ORC), which requires the review of all state agency rules within a five-year period. The purpose of this review is to determine whether a rule should be continued without amendment, be amended, or be rescinded, taking into consideration the rule's purpose and scope. In addition, the intent of the review is to ensure that rules are clear and concise as written, program requirements are accurate and up to date, unnecessary paperwork is eliminated, and when possible local agencies are given more flexibility.

As a result of this review, this rule is being proposed for permanent amendment to establish consistency in the calculation of the initial sample tolerance level and the calculation of the expanded review tolerance level. Proposed language for the calculation of the error rate is based on the sample size rather than the number of records used for rate setting as the entire population may not be tested during exception review. Data collected from historical assessment periods indicated that the error rate calculation for exception reviews was inconsistent and erroneously allowed assessment errors to fall below established tolerance levels. This will result in more accurate payment rates and is consistent with the existing calculation of the initial sample tolerance level. This amendment would also establish minimum thresholds for determining the expanded sample size. Clarifying language has been proposed indicating that exception review findings will only be taken when acceptable tolerance levels are reached or exceeded. References to the agency will be changed from the Ohio Department of Human Services (ODHS) to the Ohio Department of Job and Family Services (ODJFS) to reflect the agency name change. Using the volume of reviews and results of those reviews from past assessments, the department estimates this adoption will decrease Medicaid expenditures by \$62,883.57 on an annual aggregate basis. The impact on payment rates that would result from this change cannot be calculated until such time as the nursing facility providers qualify for exception reviews subsequent to the effective date of the proposed rule and actual exception review results of the affected providers become available.

A public hearing on the proposed rule described above was held on May 15, 2002 at 10:30 a.m. in room 1865, 30 East Broad Street, Columbus, Ohio. Public testimony was presented at the public hearing regarding the proposed rule. The proposed rule was heard before the Joint Committee on Agency Rule Review (JCARR) on June 3, 2002 at 1:30 p. m. in State House Hearing Room 121. The proposed rule was on the review agenda at the JCARR hearing with both opponent and proponent testimony being presented at the hearing. The JCARR committee did not motion to invalidate the rule, and as a result, this notice serves to advise you that the above mentioned rule, for the justifications set forth above, was amended on a permanent basis and will be effective on or about July 1, 2002.